IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Lalit Kumar Vs. Prakash Chandra & Anr.

S.B.CR.MISC. PETITION NO.771/2005

against the order dt.2.7.2005 passed by Sessions Judge, Udaipur in Cr.Revision Petition No.40/2005.

DATE OF ORDER :: August 29, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Manoj Joshi, for the petitioner.

Mr.L.D.Khatri, for non-petitioner No.1.
Mr.Ashok Upadhyaya, Public Prosecutor.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 2.7.2005 by Sessions Judge, Udaipur (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 31.1.2005 passed Judicial Magistrate No.1, Udaipur (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State as also the counsel appearing for non-petitioner No.1. Perused the orders of the trial court as well as of the revisional court.

The proceeding has been initiated by filing a complaint against the present petitioner by non-petitioner No.1 under section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) before the trial court and the trial court took the cognizance of the offence and issued the process. In compliance of the process, the accused-petitioner appeared before the trial court. The matter was posted for reading over the substance to 31.1.2005 but on that day, the accused-petitioner failed to appear, however, his counsel appeared and filed an application seeking dispensing with the personal appearance of the accused-petitioner. The application was allowed by the trial court. While dispensing with the personal appearance of the accused-petitioner before the trial court for a particular date, the substance of charge was read over to his counsel. That order came to be challenged by the petitioner before the revisional court. By an elaborate and well reasoned order, the revisional court dismissed the application.

It is contended by the learned counsel for the petitioner

that section 251 Cr.P.C. requires the reading over the substance in the presence of the accused but the substance was read over to his counsel in absence of the accused-petitioner and, therefore, he has been deprived of raising valid defences. It is settled law that in a summary case, the substance of charge can be read over to the counsel. No prejudice can be caused in reading over the substance to the counsel for the petitioner. It was the petitioner, who voluntarily remained absent from the trial court and at his request, his personal appearance was dispensed with by the trial court and, therefore, reading over the substance to the counsel, in my view, has not caused any prejudice in any manner. So far as defence of the petitioner is concerned, when the petitioner enters into the defence, it is always open for the petitioner to raise the defences if any available to him. In the circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court. No case for interference in inherent jurisdiction is made out.

Consequently, the petition is dismissed. Ad interim stay order dt. 10.11.2005 is vacated. The stay petition also stands dismissed.

[H.R.PANWAR],J.

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